APPEAL NO. 161985
FILED NOVEMBER 7, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on September 6, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant (claimant) was not in the course and scope of his employment when involved in the motor vehicle accident on (date of injury); and (2) the claimant did not have disability resulting from an injury sustained on (date of injury).

The claimant appealed, contending that the hearing officer's determinations are against the great weight and preponderance of the evidence. The respondent (carrier) responded, urging affirmance of the hearing officer's determinations.

DECISION

Reversed and rendered.

The claimant testified that he was a general foreman for the employer and was working at the employer's Midland location when he was told on May 2, 2016, that he was being sent to work at the employer's Baytown location. The claimant was told to choose a crew to bring with him to Baytown for a May 4, 2016, safety meeting. The claimant testified that he went to work at the Midland location on the morning of (date of injury), then, along with one of the two employees he chose to go to Baytown, went to pick up the second employee at that employee's hotel. The claimant testified that he and the two employees drove to an RV park in which the claimant was staying to pick up the claimant's luggage. The claimant testified that he planned to pick up his luggage, then go to the first employee's hotel to pick up his luggage, then go to Discount Tire to repair his tire, then drive to Baytown. However, upon arriving at the RV park the claimant discovered that his wife had not completed packing his luggage. The claimant testified that he decided to drive to a Discount Tire store approximately five miles from the RV park to have the tires on his truck repaired while waiting for his luggage to be packed because he felt his tires were unsafe for the approximate 10-hour drive from Midland to Baytown. After the tires were repaired and while on the way back to the RV park to pick up his luggage the claimant's truck was rear-ended by another vehicle. The claimant testified that he and one of the other employees were transported by ambulance to the hospital where they were both treated and released.

COURSE AND SCOPE OF EMPLOYMENT

In the Discussion portion of the decision the hearing officer stated that, although he found the evidence that the claimant had been directed by his employer to go from Midland to Baytown to be persuasive, he also found that changing and repairing tires on the claimant's truck was a personal errand and that the claimant deviated from the course and scope of employment during that personal errand.

Course and scope of employment as defined in Section 401.011(12) generally does not include transportation to and from the place of employment except in certain limited circumstances; one of these, the "special mission" exception, arises where the employee is directed in his employment to proceed from one place to another. Section 401.011(12)(A)(iii). Generally, an employee on a special mission does not go into and out of the course and scope of employment while on that special mission. This is sometimes referred to as the principle of "continuous coverage." Appeals Panel Decision (APD) 980924, decided June 22, 1998; APD 950973, decided July 31, 1995; APD 050051, decided February 28, 2005. It applies to special missions unless there is a deviation from or abandonment of the course and scope of employment while on a personal errand. APD 000118, decided February 24, 2000. Regarding this area of the law, the Appeals Panel has frequently cited PHILLIP HARDBERGER, TEXAS WORKERS' COMPENSATION TRIAL MANUAL p. 11-4 (Parker-Griffin Publishing 1991) as stating:

> An Employee whose work involves travel away from the employer's premises is in the course of employment continuously during the trip, except when a distinct departure on a personal errand is shown.

The question of whether the claimant is engaged in a personal errand is a fact question for the hearing officer to resolve. *See* APD 980907, decided June 15, 1998; APD 101035, decided September 30, 2010.

In an unappealed finding of fact the hearing officer found that the travel from the Midland work site to the employee's hotel, to the claimant's RV, to the other employee's hotel, and then from Midland to Baytown was a continuous course of events in the employer-directed trip from Midland to Baytown. However, the hearing officer also found that the claimant deviated from the journey from Midland to Baytown to have the tires on his truck repaired at a local Discount Tire location. Therefore, the question in this case is whether the claimant deviated from the course and scope of his employment when he traveled to Discount Tire to have the tires on his truck repaired.

The claimant testified that the truck he was driving at the time of the accident was his personal vehicle, but the employer paid him $30 per day for the use of his truck. In evidence is a statement from Richard Winn (Mr. W) dated July 26, 2016, in which Mr. W confirmed that hourly foremen and operators are reimbursed for use of their personal

vehicles at a rate of $30 per day. The claimant testified that the $30 covers things like maintenance and insurance, that he was responsible for maintenance of his truck, and that he was paid $30 per day for each day worked plus one additional day each month regardless of whether or not the truck needed maintenance.

The claimant contended that he was furthering the employer's business affairs when he went to Discount Tire to have his tires repaired because he was transporting himself and two other employees to the work site in Baytown as directed by his employer. We agree. The evidence established that the employer directed the claimant to choose a crew of men to report with him to Baytown for a safety meeting on May 4, 2016; on (date of injury), the claimant and the two employees were preparing to travel in the claimant's truck to Baytown for the safety meeting held the following day; and the claimant went to Discount Tire on (date of injury), to have his tires repaired before traveling to Baytown to ensure the safety of himself and the other two employees.

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. *See Cain v. Bain*, 709 S.W.2d 175 (Tex. 1986).

In reviewing this evidence in the instant case, the claimant did not deviate from the course and scope of his employment when he traveled to Discount Tire to repair the tires on his truck in preparation of the 10-hour drive to Baytown directed by the employer. Accordingly, we hold that the hearing officer's determination that the claimant was not in the course and scope of his employment when involved in the motor vehicle accident on (date of injury), is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. We reverse the hearing officer's determination and we render a new decision that the claimant was in the course and scope of his employment when involved in the motor vehicle accident on (date of injury).

DISABILITY

The hearing officer found that the claimant sustained damage or harm to the physical structure of his body in the motor vehicle accident, and that as a result of the damage or harm sustained the claimant was unable to obtain and retain employment at wages equivalent to his pre-injury wage from May 4, 2016, through the date of the CCH. The hearing officer's findings were not appealed. Given that we have reversed the hearing officer's determination that the claimant was not in the course and scope of his employment when involved in the motor vehicle accident on (date of injury), and have rendered a new decision that the claimant was in the course and scope of his

employment when involved in the motor vehicle accident on (date of injury), we also reverse the hearing officer's determination that the claimant did not have disability resulting from an injury sustained on (date of injury), and we render a new decision that the claimant had disability from May 4, 2016, through the date of the CCH.

SUMMARY

We reverse the hearing officer's determination that the claimant was not in the course and scope of his employment when involved in the motor vehicle accident on (date of injury), and we render a new decision that the claimant was in the course and scope of his employment when involved in the motor vehicle accident on (date of injury).

We reverse the hearing officer's determination that the claimant did not have disability resulting from an injury sustained on (date of injury), and we render a new decision that the claimant had disability from May 4, 2016, through the date of the CCH.

The true corporate name of the insurance carrier is **NORTH RIVER INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MIKE HICKS
2400 LAKESIDE BOULEVARD, SUITE 200
RICHARDSON, TEXAS 75082.

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge